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In the Matter of

HOWARD DANIELS,  
Claimant,

v.

I.T.S. and LONG BEACH  
CONTAINER TERMINAL,  
Employers,

and

F.A. RICHARDS & ASSOCIATES and  
ACCLAIM RISK MANAGEMENT,  
Carriers,

and

DIRECTOR, OFFICE OF WORKERS'  
COMPENSATION PROGRAMS,  
Party-In-Interest.

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CASE NOS. 90-LHC-3318  
93-LHC-3076  
OWCP NOS. 18-53200  
18-47855

#### DECISION AND ORDER AWARDING ATTORNEY FEES AND COSTS

On October 31, 1994, a Decision and Order was issued in the above-captioned case, awarding Claimant permanent and partial and permanent and total disability compensation. In anticipation of an award of benefits, Claimant's counsel had filed a petition for attorney fees and costs on September 27, 1994, in which she itemized 141.25 hours of attorney time for work performed before the Office of Administrative Law Judges at an hourly rate of \$200.00, 18.25 hours of paralegal time at an hourly rate of \$100.00 and costs expended on behalf of Claimant totalling \$3,375.54.<sup>1</sup> Claimant's counsel also filed an Amended Fee Petition on October 26, 1994, in which she itemized an additional 3.25 hours of attorney time at an hourly rate of \$175.00.<sup>2</sup>

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<sup>1</sup> In addition, Claimant's counsel filed a request for medical expenses pursuant to Section 7 of the Longshore Act. However, as the issue of costs for medical treatment was subsequently adjudicated in the October 31, 1994, Decision and Order Awarding Benefits, it need not be addressed here.

<sup>2</sup> In her Amended Fee Petition, Claimant's counsel stated that this 3.25 hours of attorney time was in addition to another 8.25 hours spent by the same attorney, her associate Marc

Claimant's counsel states that while her customary fee is \$175.00 per hour, she believes the complexity of the case warrants an hourly rate of \$200.00.

Although her fee petition bills 6.0 hours of attorney time and 1.0 hour of paralegal time to Respondent Long Beach Container Terminals ("LBCT"), with the remaining attorney and paralegal time billed to Respondent International Transportation Services ("ITS"), Claimant's counsel states that because of the nature of the case, the vast majority of the work was intermingled and the time that was logged in the ITS file was devoted to both claims. She, therefore, suggests that the fees be equally divided between LBCT and ITS.

LBCT and ITS both filed timely objections to counsel's fee petition. Specifically, both argue that: 1) \$200.00 is an excessive hourly rate for counsel's work and that \$125.00 per hour is more reasonable; 2) \$100.00 is an excessive hourly rate for paralegal work and a reasonable hourly rate should be between \$60.00 and \$65.00 per hour; and 3) under the itemization of attorney and paralegal time, the description of work performed is not sufficiently specific to ascertain whether or not the time spent was reasonable and necessary.

Individually, ITS also objects to the total amount of time itemized by counsel as unreasonable and excessive, and submits that the total fee award should be \$20,000.00, based upon 160 hours of work at an hourly rate of \$125.00. ITS adds that it agrees with counsel's suggestion to equally apportion the fees between it and LBCT. Finally, ITS objects to Drs. Verin and Latteri expert witness costs of \$1,500.00 each, arguing that \$1,000.00 each is more than reasonable for the amount of time each doctor spent testifying.

LBCT objects, however, to equally apportioning the fees between it and ITS, contending that such equal apportionment would deprive it of adequate due process because it cannot make an informed objection about charges that were not assessed against it. Moreover, LBCT argues that as the last responsible employer, ITS is liable for fees and costs for work that cannot be shown as necessary to prevail against LBCT. According to LBCT, it should only be liable for the 6.0 hours of attorney time and 1.0 hour of paralegal time specifically itemized against it. LBCT further argues that the costs for Drs. Latteri and Verin's testimony should be assessed against ITS because their testimony

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Coleman, which she had previously billed. To date, however, this office has never received an itemization of those 8.25 hours. Accordingly, those non-itemized hours will not be considered as part her fee petition, as they fail to comply with the requirements of 20 C.F.R. § 702.132.

related to the March 26, 1991, injury with ITS. LBCT states, however, that it is willing to equally divide the remaining trial transcript and postage costs.

In evaluating a fee request, an ALJ should consider: 1) whether the fee is reasonably commensurate with the necessary work done; 2) the quality of the representation; 3) the complexity of the legal issues involved; 4) the amount of benefits awarded; 5) customary fees for similar work in the community; 6) awards in similar cases, and; 7) time demands upon the attorney. 20 C.F.R. §702.132; Presley v. Tinsley Maintenance Service, 529 F.2d 433 (5th Cir. 1976); Berkstresser v. Washington Metropolitan Transit Authority, 16 BRBS 231 (1984). In addition, an ALJ may consider his experience and personal knowledge of the facts and the practice of law when he makes a determination of the reasonableness of an attorney's fee. Morris v. California Stevedore & Ballast Co., 10 BRBS 375 (1979).

#### Hourly Rate

I do not agree with counsel's assertion that the complexity of the case warrants an increase in her usual and customary fee. I also disagree with Respondents' assertion that \$125.00 is a reasonable hourly fee. Instead, on the basis of the above-stated criteria, I find that \$175.00 per hour is a reasonable rate for Ms. Middleton's services. It is not only her usual and customary fee, but is also representative of fees awarded to longshore counsel in the Los Angeles area and is commensurate with Ms. Middleton's experience, which is considerable. Similarly, I find that the hourly rate of \$175.00 charged for Mr. Coleman's time is reasonable. However, I do agree with Respondents' contention that \$100.00 is an unreasonable hourly rate for paralegal time, and that \$65.00 per hour is not only reasonable, but is representative of rates charged for paralegal work in longshore cases in the Los Angeles area. I therefore find that Claimant's counsel is entitled to \$175.00 per hour for attorney time and \$65.00 per hour for paralegal time.

#### Amount of Hours

Respondents have not objected to any of the individual time itemizations in Claimant's counsel's fee petition. Instead, ITS argues that the total fee award sought is excessive. Moreover, both argue that the time entries themselves are too generic and lack the specificity that is necessary for them to ascertain whether the itemized time was reasonable and necessary.

In order to determine the reasonableness of an attorney fee petition:

The Regulations and cases require claimant's attorney to submit a complete statement of the extent and

character of the necessary legal services rendered, including the type of work performed, the date, the number of hours worked on that day, the hourly rate, and whether the work was performed by an attorney, a paralegal, a law clerk, or other personnel.

Jaqua v. Pro-Football, Inc. 8 BRBS 825, 829 (1978). While the descriptions of the work performed in counsel's fee petition could have been more detailed, I nonetheless find that it is sufficiently specific and complies with the requirements of 20 C.F.R. § 702.132. I further find that the total number of hours, spent in the successful prosecution of the two claims against two separate employers, is reasonable.

Accordingly, I find that Claimant's counsel is entitled to fees for 144.5 hours of attorney time (141.25 hours for Ms. Middleton and 3.25 hours for Mr. Coleman) at an hourly rate of \$175.00, and 18.25 hours of paralegal time at an hourly rate of \$65.00, which results in a total fee award of \$26,473.75.

#### Apportionment of Fees

I disagree with LBCT's contention that equal apportionment of Claimant's counsel's fees would deprive it of its due process rights. Rather, due process requires only that the fee request be served on the employer and that the employer be given a reasonable time to respond, which both Respondents have had. Todd Shipyards Corp. v. Director, OWCP 545 F.2d 1176 (9th Cir. 1976). Moreover, I agree with Claimant's counsel and ITS that, given the nature of the two claims and the benefits awarded, it is reasonable to equally apportion Claimant's counsel's fees between the two Respondents. I therefore find that LBCT and ITS are each responsible for 50% of the above-stated fee award.

#### Costs

I agree with LBCT that Drs. Latteri and Verin's testimony related to Claimant's disability resulting from his March 26, 1991, injury at ITS, and were necessary in proving Claimant's claim against ITS. Given this, I find that ITS is solely responsible for their expert witness fees. Moreover, I agree with ITS that their fees of \$1,500.00 each are excessive, and should be reduced to \$1,000.00 each, which is a reasonable fee. I further agree with LBCT that the remaining costs for trial transcript and postage, which total \$357.94, should be equally divided between ITS and LBCT. I therefore find and conclude that ITS and LBCT are liable for costs in the amounts of \$2,178.97 and \$178.97, respectively.

ORDER

It is, therefore, ORDERED that:

1. ITS pay Claimant's counsel \$15,415.84 in fees and costs (\$13,236.87 in attorney and paralegal fees plus \$2,178.97 in costs);
2. LBCT pay Claimant's counsel \$13,415.84 in fees and costs (\$13,236.87 in attorney and paralegal fees plus \$178.97 in costs).

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Edward C. Burch  
Administrative Law Judge

Dated:  
San Francisco, California